

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Darren S. Simmons, #182509,)	
)	5:13-cv-1950-RMG
Plaintiff,)	
)	
V.)	
)	ORDER
William R Byars, Jr., et al.,)	
)	
Defendants.)	
)	

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that certain claims in this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915. (Dkt. No. 59). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, a state prisoner proceeding pro se, brings this civil action against various defendants under 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). The Magistrate Judge then issued the present R&R. (Dkt. No. 59). Plaintiff failed to file objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

After review of the record and the R&R, the Court finds that the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and wholly adopts the R&R as the order of the Court. The Court agrees Defendant Poole should be dismissed because the Complaint makes no allegations of wrongdoing by her. Further, it is clear that Plaintiff did not exhaust his administrative remedies as to the alleged gassing incident of July 12, 2013, because this action was filed that same day. (Dkt. No. 1-2); *see Houston v. Lack*, 487 U.S. 266 (1988) (prisoner complaints are considered filed when they are received by prison mailroom).

Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 59).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

February 4, 2014
Charleston, South Carolina